

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Criminal Misc. No. M-13891 of 2014
Date of decision: 11.03.2015.**

Ashok Kumar Gogia

..Petitioner

Versus

State of Haryana and another

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr. Sanjay Vashisth, Advocate
for the petitioner.

Mr. Munish Sharma, A.A.G., Haryana
for respondent No.1 – State.

Mr. Sanjeev Kodan, Advocate
for respondent No.2.

Daya Chaudhary, J.

The present petition has been filed under Section 482 Cr.P.C. for setting aside the judgment dated 07.03.2014, whereby, revision petition filed by the petitioner has been dismissed by Additional Sessions Judge, Bhiwani as well as summoning order dated 01.05.2013 passed by Judicial Magistrate 1st Class, Bhiwani, whereby, the petitioner has been summoned to face trial for offences

punishable under Sections 499, 500 and 506 of Indian Penal Code (for short 'IPC') in criminal complaint dated 09.04.2011/17.04.2012.

Briefly, the facts of the case are that complainant-respondent No.2 made a complaint to Governor of Haryana, the Vice-Chancellor of MD University and Higher Education Commissioner, Haryana, Panchkula highlighting commission of fraud in public exchequer by duplicity in examination and revaluation duties as well as of tax evasion against the petitioner but no action was taken.

Reply of aforesaid complaint was filed by the petitioner wherein it was mentioned stating that the complainant is habitual of making false complaints and appears to be mentally disturbed. A legal notice was also served upon the petitioner on 18.01.2011, which was responded by the petitioner by showing his clear intention.

Complainant filed criminal complaint in the Court of JMIC, Bhiwani stating that the petitioner-accused used derogatory words and his image has been lowered down in the society. Petitioner has committed offences punishable under Sections 499, 500 and 506 IPC for his wrong act and is liable to be punished.

In support of complaint, the complainant examined himself as CW1 and one Suresh Kumar, Clerk as CW2. On the basis of said complaint, the petitioner was summoned to face trial for offences punishable under Sections 499, 500 and 506 IPC vide order dated 01.05.2013 passed by Judicial Magistrate Ist Class, Bhiwani.

Aggrieved against the said order passed by the trial Court,

the petitioner had filed revision petition before Additional Sessions Judge, Bhiwani, which was dismissed on 07.03.2014.

The present petition has been filed to challenge the complaint, order of summoning Court as well as order passed by the Appellate Court by raising various arguments.

Learned counsel for the petitioner submits that the case of the petitioner is squarely covered by the third and ninth exception to Section 499 IPC. The words mentioned in the reply do not constitute any offence as these were uttered in good faith and for protection of his interest. It cannot be termed as defamation to make imputation on the character of the complainant. While dismissing revision petition, this contention of the petitioner has not been considered. Learned counsel for the petitioner has also relied upon judgment of Hon'ble Bombay High Court in **Sukumar Biswas vs. State of Maharashtra and ors., 1992(3) CCR 2522** as well as judgment of Hon'ble Madras High Court in **P. Swaminathan and others vs. Lakshmanan, 1992 CriLJ 990** in support of his contentions.

Learned counsel for respondent No.2 submits that at the time of summoning only the allegations levelled in the complaint are to be seen and in case a prima facie case is made out for summoning and the Court is satisfied that sufficient grounds are there for proceeding against the accused, then summoning order is passed. A detailed order has also been passed by the Revisional Court wherein it has been held that at the stage of issuance of process, the

Magistrate is only concerned with the allegations levelled in complaint and in case, the Court reaches to the conclusion that sufficient material is there for summoning the accused, the accused is summoned.

Heard arguments of learned counsel for the petitioner as well as learned counsel for respondent No.2 and have also perused the impugned orders as well as other documents on the file.

The main arguments raised by learned counsel for the petitioner are that the words used in the reply were stated in good faith and to protect his interest and the same cannot make him liable for defamation in any manner. The words stated in the reply were used not only in good faith but to protect his interest and the case falls under third and ninth exception to Section 499 IPC.

The only issue for consideration by this Court is whether the petitioner is entitled to protection provided under exception third and ninth to Section 499 IPC, keeping in view the relevant words stated by the complainant in the reply that are "he is habitual litigant, mentally disturbed and a person of unsocial behaviour".

Exception third and ninth to Section 499 IPC are reproduced as under: -

*Third Exception — **Conduct of any person touching any public question.**—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person*

touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Ninth Exception—Imputation made in good faith by person for protection of his or other's interests. It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

As per the third exception to Section 499 IPC, in case, some defamatory remarks are made in good faith after due care and attention, then it cannot said to be a case of defamation.

Similarly, exception ninth to Section 499 IPC gives protection to imputations made in good faith for the protection of the interest of the person making it or of any other person or for the public good. In case, the words are uttered in good faith and for the purpose of protection of his interest, then it cannot be a case of defamation.

In the present case in the reply submitted to the complaint, it was stated that the complainant is habitual of making complaints and he is mentally disturbed. As per case of the petitioner, these words were mentioned in the reply of the complaint, not only to protect his case but in good faith and there was no intention on his part to

defame the other person. The stand of the complainant is that the reply filed by the petitioner was circulated to the authorities concerned and his reputation was lowered down in the eyes of public. It is also the argument of learned counsel for the petitioner that while dismissing revision petition, neither exception third nor exception ninth have been discussed.

On perusal of impugned order as well as order passed in revision petition, it shows that the 'words' were mentioned in the reply submitted by the petitioner as certain allegations were levelled against him. It was stated that the complainant is in habit of making such complaints, which relates to the complaint against accused-petitioner. The purpose was not to defame him but to protect his interest. While submitting reply to the notice, no doubt accused in order to bring his case under exception third or ninth to Section 499 IPC must first establish that in making imputations, he acted with due care and attention so as to protect his interest. The imputations need not to be true but it is to be seen whether he has acted with due care and attention which depends upon facts of each case. Being an exception, the burden to prove is on the accused that it was stated for protection of his interest or without any such intention. The accused need not prove the exception beyond reasonable doubt as the prosecution is required to prove the guilt of the accused. It is sufficient to show that due care and attention was made while uttering certain words to the complainant. Hon'ble the Apex Court in **Chaman Lal vs. State of**

Punjab, AIR 1970 Supreme Court 1372 while dealing with good faith in the ninth exception has said that in order to establish good faith and *bonafide* it has to be seen first the circumstances under which, the letter was written or words were uttered; secondly whether there was any malice; thirdly, whether the appellant made any inquiry before making these allegations; fourthly, whether there are reasons to accept the version that he acted with due care and caution and finally whether there is preponderance of probability that the petitioner acted in good faith.

The ninth exception shows that if the imputation is made in good faith for the protection of person making it or another person or for public good, the same cannot be said as defamation.

It is to be seen whether the imputation was made for the public good or the accusation was not made in good faith. Good faith requires due care and caution. The words stated in the reply were in response to complaint just to show that the complainant was habitual of making such complaints and notice was issued without any application of mind. It is to be seen whether said words were uttered in light of peculiar facts and circumstances of the case. The complaint was made against the petitioner and notice was issued wherein certain allegations were levelled against him. In response to notice, reply was filed and certain words were uttered just to show his innocence by proving that the other party was habitual of making such complaints.

In view of the facts as mentioned above, while passing summoning order, the trial Court has not considered the third and ninth exception to Section 499 IPC. Although, it is not necessary that a detailed finding is to be recorded at the time of summoning but it was to be mentioned as to whether the words stated by the petitioner falls under the third and ninth exception to Section 499 IPC or not.

Accordingly, the present petition is allowed and the impugned order of summoning dated 01.05.2013 and order passed by the revisional Court dated 07.03.2014 are set-aside and the trial Court is directed to pass a fresh order after considering exception third and ninth to Section 499 IPC.

11.03.2015
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(DAYA CHAUDHARY)
JUDGE